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09/901,429	07/09/2001	David N. Herndon	D6414	7358

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 14

Application Number: 09/901,429
Filing Date: July 09, 2001
Appellant(s): HERNDON, DAVID N.

*mailed out
date 4-9-03*

Benjamin Aaron Adler, Ph.D., J.D.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 21, 2003.

(1) Real Party in Interest

A statement identifying the real party in interest, Research Development Foundation, is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The appellant's statement regarding grouping of the claims in the brief is correct.

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

Herdon et al., "Lyposis in Burned patient is stimulated by the Beta2-receptor for Catecholamines" Arch Surg, Vol. 129, Dec. 1994, 1301-1305.

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-7, 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Hernden et al(1994).

Herndon et al teach burn treatment using beta adrenergic blockers such as propranolol. They acknowledged that beta-adrenergic blockade has been used with success by decreasing excessive catecholamines and by decreasing myocardial workload and whole-body irritability, see page 1301, 1st paragraph, for example, .." We have previously shown that nonselective beta-adrenergic receptor blockade with propranolol can be therapeutic in severely burned children and adult....".

Especially at page 1302, this conventional knowledge has been demonstrated in the clinical study disclosed, wherein the severely burned patients were treated with a pharmacologically effective dose of intravenous propranolol (2mg/kg) to prove therapeutic efficacy without adverse effect, see page 1304, last paragraph, also.

Thus, the critical elements(i.e. the effective therapeutic dosage regimen(2mg/kg), the burn patients and the successful outcome) required by the instant claims have been taught and acknowledged. Thus, all the claimed subject matter is not patentably distinguished by the cited reference.

(11) *Response to Argument*

The difference between the cited reference and the instant claims are discovery of underlying mechanism which is newly found by the instant appellant.

However, the underlying mechanism recited in the claims (i.e. skeletal muscle protein kinetics) are not considered as a critical element having patentably weight because the outcome of the treatment is same regardless knowing this said underlying mechanism. Since same therapeutic modality are taught and the same patient is also used in the treatment, there is no difference between the claimed subject matter and the conventional treatment. Thus, the claimed subject matter(i.e. the method of treating an individual having a severe burn using a pharmacologically effective dose of a beta-adrenergic antagonist such as propranolol) is anticipated and the claims are maintained as rejected.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

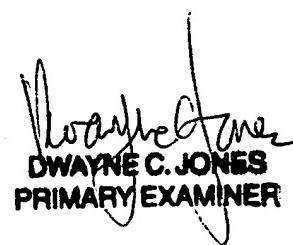


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April 3, 2003

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